



## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

**DATES:** Comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at <https://www.reginfo.gov/public/do/PRAMain>. Please find this particular information collection by selecting "Currently under 30-day Review – Open for Public Comments" or by using the website's search function. Comments can be entered electronically by clicking on the "comment" button next to the information collection on the "OIRA Information Collections Under Review" page, or the "View ICR – Agency Submission" page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting <https://www.reginfo.gov/public/do/PRAMain>.

In addition to the submission of comments to <https://Reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the "Commission" or "CFTC") by clicking on the "Submit Comment" box next to the descriptive entry for OMB Control No. 3038-0090, at <https://comments.cftc.gov/FederalRegister/PublicInfo.aspx>.

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.<sup>1</sup> The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Lee McFarland, Attorney Advisor, Market Participants Division, Commodity Futures Trading Commission, (202) 418-5368, email: [lmcfarland@cftc.gov](mailto:lmcfarland@cftc.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Adaptation of Regulations to Incorporate Swaps-Records of Transactions; Exclusion of Utility Operations Related Swaps with Utility Special Entities from De

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<sup>1</sup> 17 CFR 145.9.

de minimis Threshold for Swaps with Special Entities (OMB Control No. 3038–0090). This is a request for extension of a currently approved information collection.

*Abstract:* Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, Pub. L. 111–203, 124 Stat. 1376 (2010)) amended the Commodity Exchange Act (CEA) to establish a comprehensive new statutory framework for swaps. These amendments required the Commodity Futures Trading Commission (“the Commission”) to amend several of its regulations to implement the new framework. The information collection obligations imposed by the “Adaptation of Regulations to Incorporate Swaps” final regulations<sup>2</sup> remain necessary to implement section 721 of the Dodd-Frank Act, which amended the definitions of futures commission merchant (“FCM”) and introducing broker (“IB”) to permit these intermediaries to trade swaps on behalf of customers. They also are necessary to implement section 733 of the Dodd-Frank Act which introduced swap execution facilities (“SEFs”) as a new trading platform for swaps. As a result of the enactment of sections 721 and 733, the Commission needed to amend certain recordkeeping regulations (§§ 1.31, 1.33, 1.35, 1.37, and 1.39) so that records of swap transactions are maintained analogously to how futures transactions are maintained.

Further, the “Exclusion of Utility Operations-Related Swaps With Utility Special Entities from De Minimis Threshold for Swaps With Special Entities”<sup>3</sup> regulation amended the Commission’s swap dealer definition to permit a person to exclude “utility operations-related swaps” with “utility special entities” in their de minimis threshold calculations. The regulation requires a person claiming the exclusion to maintain, in accordance with Commission regulation 1.31, any written representations that the person receives from utility special entities related to this exclusion.

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<sup>2</sup> Adaptation of Regulations to Incorporate Swaps, 77 FR 66288 (Nov. 2, 2012).

<sup>3</sup> Exclusion of Utility Operations-Related Swaps with Utility Special Entities from De Minimis Threshold for Swaps with Special Entities, 79 FR 57767 (Sept. 26, 2014).

The information collection burdens associated with these regulations (collectively, the “Swap Recordkeeping Requirements”) are restricted to the costs associated with the recordkeeping and reporting requirements that these regulations impose upon affected registrants, registered entities, those registered entities’ members, and other respondents covered by the final rules.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. On April 14, 2023, the Commission published in the *Federal Register* notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 88 FR 23011. The Commission received two comments.

Commenter Bill Gilbert expressed support for transparent reporting of swaps and data in the financial industry, and urges the Commission to continue to take steps to ensure data access for retail investors.<sup>4</sup> Commenter Michael Gilbert submitted a similar comment also supporting enhanced swap data reporting for the benefit of retail investors.<sup>5</sup> The Commission prioritizes improved access to swaps data for retail investors, and considers a renewal of this collection to be consistent with that priority.

*Burden Statement:* The Commission is revising its estimate of the burden for this collection for futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of designated contract markets and swap execution facilities. The respondent burden for this collection is estimated to be as follows:<sup>6</sup>

*Estimated Number of Respondents:* 13,598.<sup>7</sup>

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<sup>4</sup> Comment of Bill Gilbert, received April 16, 2023.

<sup>5</sup> Comment of Michael Gilbert, received April 16, 2023.

<sup>6</sup> These estimates represent the aggregate burden for all data associated with the Swap Recordkeeping Requirements in the collection, namely Swap Recordkeeping (Regulation 1.35), Swap Confirmations (Regulation 1.33), and Utility Special Entities (Regulation 1.3). Please refer to the supporting statement for further explanation of burdens associated with each regulatory requirement.

<sup>7</sup> This number is derived from combining the estimated number of FCMs (60), IBs (974), RFEDs (4), DCM members (11,500), and SEF members (1,000) as of March 31, 2020. The Commission acknowledges that some entities may be double-counted in this estimate. For example, an FCM may be a member of a SEF.

*Estimated Annual Burden Hours per Respondent: 148.*

*Estimated Total Annual Burden Hours: 2,018,728.*

*Frequency of Collection: As needed.*

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 et seq.)

Dated: June 21, 2023.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

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